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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO CAMACHO,

Defendant and Appellant.

D074237

(Super. Ct. No. SCS297415)

APPEAL from a judgment of the Superior Court of San Diego County,

Garry G. Haehnle, Judge. Affirmed.

Heather L. Beugen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Allison V. Acosta and Eric A. Swenson, Deputy Attorneys General, for Plaintiff and Respondent.

In the culmination of an ongoing dispute, defendant Mario Camacho threw no less than nine bricks through the windows and patio doors of his upstairs neighbor's apartment. A jury convicted him of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and felony vandalism (Pen. Code § 594, subds. (a) & (b)(1)).¹ Camacho appeals only the assault conviction, arguing a lack of sufficient evidence that he knew of facts which would lead a reasonable person to believe his actions would directly and probably result in the application of force to someone. We reject his claim and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Mario Camacho and his upstairs neighbor, Miguel M., did not get along. While the neighbors initially had a decent relationship, it quickly deteriorated beginning in October 2017. Camacho frequently complained that Miguel made too much noise and would bang on his ceiling to signal to Miguel that he was being too loud. Camacho threw eggs at Miguel's patio on two separate occasions.

On November 14, 2017, Miguel was at home in his apartment. He heard Camacho bang on his ceiling, go outside, and begin shouting. Standing at the left side of the sliding glass doors to his patio, with half his body hidden behind the adjacent wall, Miguel began filming with his cell phone. Suddenly, Camacho grabbed a brick and

¹ Future statutory references are to the Penal Code.

hurled it towards Miguel's apartment. The brick bounced off the patio railing and landed in the bushes next to Camacho. Miguel retreated further behind the wall as Camacho threw another brick that broke through the right-side panel of the glass door. Miguel backed away from the windows into his apartment as Camacho threw bricks through the sliding glass doors and the living room window, shattering glass everywhere.

Miguel began yelling for help. Camacho shouted for him to come down, and Miguel responded by telling Camacho to stop. Camacho did not stop. He continued to lob bricks into Miguel's apartment. He began to count to ten for Miguel to come down. Multiple neighbors noticed the commotion. One neighbor, Xavier H., came outside and told Camacho to stop because someone would get hurt. Camacho told Xavier to go back inside; he had no issues with Xavier, and the dispute was between Camacho and Miguel. Xavier then called the police. Meanwhile, Camacho threw more bricks through the windows of Miguel's apartment.

Officers from the Chula Vista Police Department arrived at the apartment complex a short while later. At that point, Camacho had gone back inside his apartment. The officers ordered him to come outside where they arrested him.

Sergeant Mark Meredith inspected Miguel's apartment and photographed bricks that landed on the couch in the living room, on and below the kitchen table, and near one of the walls leading into the bedroom. Broken glass covered almost the entire living room floor. In total, nine to 12 bricks were thrown.

The San Diego County District Attorney charged Camacho with assault with a deadly weapon (§ 245, subd. (a)(1), count 1) and felony vandalism (§ 594, subds. (a) &

(b)(1), count 2).² At trial, both defense counsel and witness Xavier maintained that Camacho was aiming at Miguel's apartment, not Miguel himself. The jury viewed Miguel's video of the incident multiple times. It convicted Camacho as charged. He was sentenced to three years of formal probation, which included a condition that he serve 365 days in local custody.

DISCUSSION

Camacho challenges his conviction for assault with a deadly weapon, arguing there is insufficient evidence he had the required mental state. In Camacho's view, the People failed to show he was aware of facts that would lead a reasonable person to realize that throwing bricks toward Miguel's apartment would probably and directly result in the application of force against a person. He argues he was not aiming for Miguel when throwing bricks toward his apartment. Because there is no evidence he could even see Miguel at the time, he contends he did not know where Miguel was inside his apartment.

As we explain, it is irrelevant whether Camacho attempted to hit Miguel with the bricks. All that is required is that Camacho was aware of facts that would lead a reasonable person to realize that his act by its nature would directly *and probably* result in the application of force to someone. (*People v. Williams* (2001) 26 Cal.4th 779, 788 (*Williams*)). There was ample evidence for the jury to find Camacho was aware of such facts.

² The district attorney also charged Camacho with making a criminal threat (§ 422, count 3) but was dismissed by the court at the preliminary hearing.

When reviewing the sufficiency of evidence to support a conviction, " 'we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' " (*People v. Cravens* (2012) 53 Cal.4th 500, 507.) We do not reweigh the evidence. (*People v. Jennings* (2010) 50 Cal.4th 616, 638.) If the evidence is sufficient to justify the trier of fact's findings, the reviewing court's opinion that the record might also support a contrary result does not justify a reversal of the judgment. (*Cravens*, at p. 508.) Rather, "[t]he conviction shall stand 'unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction]." ' " (*Ibid.*)

Assault with a deadly weapon is a general intent crime. (*Williams, supra*, 26 Cal.4th at p. 786 ["the crime of assault has always focused on the nature of the act and not on the perpetrator's specific intent"]; *People v. Rocha* (1971) 3 Cal.3d 893, 899.) To establish the mens rea of assault, a defendant "must be aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally and probably result from his conduct. He may not be convicted based on facts he did not know but should have known." (*Williams*, at p. 788.) The test is objective, not subjective. (*Ibid.*) Whether a defendant expects his actions to result in the application of force on another is irrelevant as to the mental state required for assault. (*People v. White* (2015) 241 Cal.App.4th 881, 885 (*White*).)

Case law elucidates the standard. In *Williams*, the defendant fired a "warning shot" with a shotgun at the rear passenger-side wheel well of a truck parked between himself and the victim during an argument. (*Williams, supra*, 26 Cal.4th at pp. 782–783.) He knew the victim was about a foot and a half away from where he fired the shot. (*Id.* at p. 783.) Although the defendant did not specifically aim at the victim, merely in the same vicinity, the court held that he "undoubtedly knew those facts establishing that his act by its nature would directly, naturally and probably result in a battery." (*Id.* at p. 790.)

In *White*, the defendant threw a metal showerhead against a wire-enforced window twice, shattering the glass and causing injury to two victims. (*White, supra*, 241 Cal.App.4th at pp. 883–884.) He argued there was insufficient evidence to show "he knew that throwing the showerhead would probably and directly result in the application of force to another person" (*id.* at p. 884), because there was "no evidence that he 'expected' [the victims] to be hit by the showerhead or glass fragments." (*Id.* at p. 885.) Relying on *Williams*, the court held it did not matter whether the defendant expected his actions to result in force for this general intent crime. (*Ibid.*)

Here, there is ample evidence from which a jury could find the required mental state. In the video, Miguel quickly shut his sliding glass door as Camacho winds up to throw the first brick. This brick hit the railing of Miguel's patio with enough force that it bounced back to land in the bushes next to Camacho. Afterwards, Camacho threw brick after brick through the windows of Miguel's apartment. Each brick loudly shattered glass

panes, causing shards to fly inside the unit. Camacho then told Miguel to come downstairs as Miguel called for help and asked Camacho to stop. From the video, it is clear Camacho knew Miguel was within earshot inside his apartment as he hurled nine to 12 bricks into his unit and sent shattered glass flying.

Neighbor Xavier came outside and told Camacho to stop because someone could get hurt. Ignoring this admonition, Camacho continued to throw bricks through Miguel's windows. When Sergeant Meredith inspected Miguel's apartment after the incident, he found shattered glass covering most of the living room floor and bricks strewn throughout the living room and kitchen. From the extent of the damage and location of the bricks, the jury could reasonably infer that Camacho threw them with substantial force, knowing Miguel stood inside.

It is immaterial that Camacho was not specifically aiming for Miguel. The defendant in *Williams* did not aim at the victim but was still found to have the necessary mental state. (*Williams, supra*, 26 Cal.4th at p. 790.) It likewise does not matter that Camacho did not know exactly where Miguel was inside the apartment. Just as the defendant in *White* did not necessarily expect to injure the victims when he threw the showerhead at a window, Camacho need not have expected one of the bricks to hit Miguel to have the required mental state. (*White, supra*, 241 Cal.App.4th at p. 885.) To the contrary, we agree with the Attorney General that this fact could be read to support Camacho's conviction. For if Camacho did not know exactly where Miguel was located inside the apartment during the incident, that should only have increased his awareness that someone might be hurt by the flying bricks.

Based on the evidence, a jury could easily find that Camacho knew facts that would lead a reasonable person to realize that throwing bricks through Miguel's glass windows would directly and probably result in the application of force to someone. Thus, there was sufficient evidence to support Camacho's assault conviction.

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.